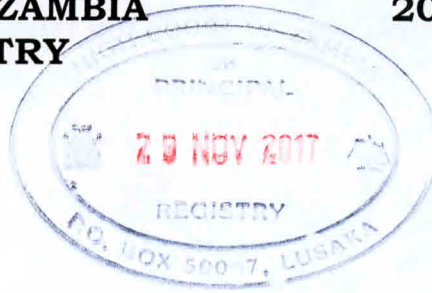


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

**2016/HP/0717**



**B E T W E E N :**

FRANCIS MULONGOTI

**PLAINTIFF**

**AND**

GODFREY ZEWELANJI SINGOYI

**DEFENDANT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the  
29<sup>th</sup> day of November, 2017**

For the Plaintiff : Mr. E.B.M. Mwansa, SC, Mwansa Phiri Shilimi & Theu  
Legal Practitioners  
For the Defendant : In Person

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**R U L I N G**

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**Legislation Referred To:**

1. *High Court Act, Chapter 27*

This is the Plaintiff's application for an order of attachment of real property. It is made pursuant to Order 42 Rule 3 of the High Court Rules. It is supported by an Affidavit sworn by **Francis Mulongoti**, who states that the Defendant fraudulently caused him

to purchase a house he did not own and was subsequently convicted of fraud. That upon his release from prison, the deponent took out this action against him.

The deponent avers that he served the Defendant Court process but he did not enter appearance nor file a defence. That Judgment in default was entered against the Defendant on 31<sup>st</sup> August, 2016. The deponent states that he levied execution of the Judgment debt by way of writ of fieri facias filed into Court on 21<sup>st</sup> October, 2016. That the Sheriff levied execution on the Defendant's personal property and chattels, but could not satisfy the judgment sum shown in the exhibit marked "**FM1**."

The deponent also avers that he has information that the House No. 11088, Zani Muone, Great North road, Lusaka, belongs to the Defendant. This is according to the ZESCO bill issued in his name and exhibited as "**FM2**". The deponent states that his Advocates have advised him that it is lawful to levy execution on the Defendant's real property where his personal and movable assets are unable to satisfy the judgment debt. He prays to the Court to

grant him an order to attach the Defendant's real property with costs.

**Godfrey Zewelangi Singoyi** filed an Affidavit in Opposition, where he states that the Plaintiff failed to specify that he signed the contract of sale between the Plaintiff and the Chishimba family as a witness.

The deponent also states that the Plaintiff only served him originating process in casu, after the default judgment was executed on 10<sup>th</sup> November, 2016. That the property intended to be attached does not belong to him but to the estate of his deceased brother, Goodfellow Singoyi. That although the ZESCO bill appears in his name, he is just an Administrator. The deponent avers that the property is under headman Chingwele and on traditional title. He also avers that the ZESCO bill is not a legal letter of sale.

The deponent avows that he has two companies namely, Godsingo Food Centre, PACRA Certificate No. 3201500249210 TPIN No. 1003420401 and SIN Contractors Limited TPIN 1001918820,

which deal in scrap metal collection and electrical repairs. That if given an opportunity, he will settle the debt he owes the Plaintiff.

At the hearing, Learned State Counsel placed reliance on the Affidavit in Support. He recounted the difficulties the Plaintiff faced in recovering the debt from the Defendant. He asserted that the property belonged to the Defendant because the ZESCO bill was issued in his name and that the area where the Defendant built his house is one where a person can build without title. He prayed to the Court to attach the Defendant's property to the judgment so that the Plaintiff could enjoy his fruits of judgment and for costs.

In response, the Defendant stated that the house in Zani Muone belonged to his deceased brother. He was just an Administrator and could prove the fact by a letter from the headman. He did not dispute that he owed the Plaintiff money and asked for more time to settle the debt.

In response, Learned State Counsel submitted that the Defendant failed to liquidate the debt owed to the Plaintiff from the



time that the judgment in default was delivered. Further, the Defendant did not adduce evidence to show that he was appointed Administrator of his deceased brother's estate. He reiterated his earlier prayer.

I have earnestly considered this application together with the Affidavits filed herein. Order 43 Rule 3 of the High Court Act reads:

**"3. On any levy on the property of any person to satisfy an order or judgment of Court for the payment of money, the real property of such person shall only be sold if the personal property is insufficient."**

According to Order 43 Rule 3, a Court can order the attachment of property when the personal assets of a debtor fail to satisfy a judgment debt. From the material on record, it is incontrovertible that the Defendant's personal assets and chattels failed to satisfy the judgment sum. This has not been disputed by the Defendant.

The Plaintiff contends that the Defendant owns House No. 11088 Zani Muone, Great North road, Lusaka, and the evidence is tendered in the form of a ZESCO bill. He also contends that the

Defendant's house is built in an area where one can build without title. The Defendant argues that the house in Zani Muone belongs to the estate of his deceased brother. He is merely an Administrator even though the ZESCO bill is registered in his name. He has not adduced a death certificate to confirm his brother's death nor Letters of Administration to support his claim.

After evaluating the contested evidence, I find that it is highly probable that the Defendant owns House No. 11088, Zani Muone. How else can he explain the ZESCO bill registered in his name? I take judicial notice that a ZESCO account is ordinarily registered in a home owner's name. It is therefore, curious that without proof of his brother's death and Letters of Administration, the Defendant is registered at ZESCO.

In the circumstances, I find that the Defendant might be attempting to escape his obligations to the Plaintiff by alleging that the house does not belong to him. It is a notorious fact that there are some areas in Lusaka where people build houses without title and this probably is one of those cases. I am therefore, satisfied

that the ZESCO bill is probably the only credible evidence that connects the Defendant to his house.

Accordingly, I order the attachment of House No. 11088 to the judgment of the Court. I award costs to the Plaintiff to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 29<sup>th</sup> day of November, 2017.

  
M. Mapani Kawimbe  
**HIGH COURT JUDGE**